

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

PROFESSIONAL FIRE FIGHTERS OF)	
MARSHALL, MISSOURI, LOCAL NO. 2706,)	
A/W INTERNATIONAL ASSOCIATION OF)	
FIRE FIGHTERS,)	
)	
Petitioner,)	
)	
vs.)	Public Case No. 79-036
)	
CITY OF MARSHALL, MISSOURI)	
)	
Respondent.)	

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION**

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon Professional Fire Fighters of Marshall, Missouri, Local No. 2706, International Association of Fire Fighters, filing a petition for certification as public employee representative of all employees of the Marshall Fire Department. The City contends that the fire chief, assistant chief, station captains and lieutenant should be excluded from the bargaining unit because of their supervisory duties. On October 10, 1979, a hearing was held in Boonville, Missouri, at which representatives of Local No. 2706 and the City were present. The case was heard by a panel of three Board members consisting of one employee member, one employer member and the chairman. The State Board of Mediation is authorized to hear and decide issues as to appropriate bargaining unit by virtue of Section 105.525, RSMo 1978.

At the hearing the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, including a consideration of the demeanor

and interests of the witnesses, sets forth the following findings of fact and conclusions of law:

FINDINGS OF FACT

The Marshall Fire Department operates from a single fire house and employs approximately 15 persons including a fire chief, an assistant chief, two captains, one lieutenant, three engineers and seven firefighters. All employees except the fire chief work in three rotating, twenty-four hour shifts. Under normal working conditions each shift consists of one engineer and two firefighters headed by the station captain who reports directly to the chief.

The fire chief is the overall head of the fire department and works a daily eight-hour shift. As head of the department the chief is vested with general authority to run the fire department and accordingly has established departmental rules and standards of procedure to be followed by all employees. As chief, he also responds to fire alarms and directs the operations at the fire scene. Per Marshall city ordinance Art. II Section 14.31, the chief must have at least six months prior to experience or training in fire fighting to qualify for the positions. The fire chief is the only department employee with the authority to recommend that a prospective employee be hired. The chief makes a recommendation to the members of the fire committee of the city council which then decides who will be employed. Similarly the chief may recommend that fire fighters be promoted, demoted or discharged. The fire chief must also deal with any disciplinary problems. If a charge is brought against a fireman, the chief will verbally reprimand the individual. If a second offense is committed the chief will make a written record of the incident which we assume will become a part of the employee's personal record. After a third violation the chief may suspend the employee; however, after the suspension the

chief must notify the fire committee which then conducts a hearing to determine whether the employee should be permanently discharged.

The assistant fire chief assumes the duties of the chief in the chief's absence. When not acting as chief, the assistant chief's duties are similar to those of a captain, working a twenty-four hour shift, stationed at the fire house. Like all other employees except the chief, the assistant chief has no authority to effectively recommend the hiring, promotion, discipline or discharge of employees. The qualifications required of an assistant chief are the same as those of the chief.

Ranking immediately below the assistant chief are the station captains. The captain is usually in charge of the shift and is responsible for the over-all maintenance of equipment and the cleanliness of the station house. Under normal conditions the captain is in charge of one engineer and two fire fighters. The captain responds to all fire alarms and is in charge of operations at the fire scene until the chief arrives. At the fire scene the captain works alongside the other firemen, handling the hose or doing whatever necessary to suppress the fire. The captains play no role in the hiring, firing, or promotion of other firemen. The captains' duties in regard to department disciplinary procedures is limited to submitting a written report to the chief when a serious rule infraction occurs.

Only one fire department employee is classified as a lieutenant, ranking immediately below the captains. In the absence of a captain or chief, the lieutenant is in charge of the shift. At all other times the lieutenant has the same duties as the engineers. One engineer works on each shift and is primarily responsible for supplying water at the fire scene. Also, the engineer is responsible for the operation and maintenance of the fire engine. The lieutenant's duties differ from those of the engineers only in that the lieutenant has the additional duty of coordinating department

training for which he is paid an additional sum. There is no evidence that the lieutenant exercises any personal discretion in performing such duties, but instead only helps coordinate the programs. The lieutenant has no authority to effectively recommend the hiring, firing or promotion of department employees. Similar to the captains, the lieutenant must report serious rule infractions to the chief.

The salaries of the department employees are as follows: chief, \$1302/month; assistant chief, \$1159/month; captain, \$1038/month; lieutenant, \$1010/month plus \$12 for each training session; engineer, \$1010/month; fire fighters, \$777-986 depending on the length of service.

CONCLUSIONS OF LAW

Local No. 2706 has petitioned to be certified as public employee representative of a bargaining unit comprised of all Marshall Fire Department employees. Petitioner argues that all department employees share a community of interest and should be included in the appropriate bargaining unit. The City, however, contends that the fire chief, assistant chief, station captains, and lieutenant are supervisory employees and should be excluded. The issue before the Board, therefore, is whether all department employees constitute an appropriate bargaining unit. An appropriate unit is defined by Section 105.500(1), RSMo 1978, as:

"a unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned;"

Missouri statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest," however, the Board has consistently held that supervisors cannot be included in the same bargaining unit as the employees they supervise. St. Louis Fire Fighters Association, Local 73, IAFF, AFL-CIO vs. City of St. Louis, Missouri, Public Case No. 76-013 Amalgamated Transit Union vs.

Bi-State Development Agency, Public Case No. 78-004. Therefore, in order to determine the appropriate unit we must decide whether the fire department employees in question--the chief, assistant chief, station captains and lieutenant--are supervisors. The Board's most recent decision setting forth the factors considered in determining whether an employee is a supervisor is St. Charles Professional Fire Fighters, Local 1921, IAFF vs. City of St. Charles, Public Case No. 79-024. Those factors are:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees.
2. The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters.
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.
4. The level of pay including a valuation of whether the supervisor is paid for his skill or for his supervision of employees.
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees.
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.

A consideration of these factors as applicable to the facts of this case is set out below.

Applying the above factors, it is clear that the fire chief is a supervisor and thus should be excluded from the unit. The chief has the authority to recommend to the city council fire committee those employees who should be hired, disciplined, or discharged. Since only the chief has the authority to make such recommendations, we must assume that his recommendations carry considerable weight and are effective. The chief directs and assigns the work force and must exercise much independent judgment in performing his duties. Marshall city ordinances vest the chief with the general authority to run the department but provide very few specific guidelines as to department policies. Consequently, the chief has much discretion in establishing departmental rules and

policies. The chief is the head of all employees, there being no other employee with equal power. Further, the chief is the highest paid employee, and is primarily responsible for the overall management of the department and is not primarily involved in supervising the fire fighter's specific activities--e.g. housekeeping duties, training, or fire suppression. Finally, there is no evidence that the chief acts as a working supervisor, working alongside the rank and file employees. Consequently, we must assume that the chief spends a substantial majority of his time in a non-working, supervisory capacity. In sum, the chief must be considered a supervisor in the truest sense of the word and thus should be excluded from the appropriate bargaining unit.

As to the assistant chief, the Board recognizes that in a substantial majority of cases an assistant chief will be considered a supervisor excluded from the bargaining unit of the rank and file employees. However, in this case the Board must make an exception to the general rule in that the Marshall Fire Department assistant chief does not have the authority necessary to be considered a supervisor. There is little evidence establishing the supervisory nature of the assistant chief's position. The evidence presented establishes only that the assistant chief acts as chief when the chief is absent and that the assistant chief has qualification requirements identical to those of the chief. In order to be considered a supervisor, an employee must have supervisory authority of a permanent nature or at least for a substantial period of time. In this case the fire chief is always available by phone after his eight-hour working shift. Thus, it appears the assistant chief works as chief only during those periods when the chief is out of town--an event which we assume occurs only during vacation periods or other short intervals. We must conclude that this temporary authority to act as chief is not sufficient to give the assistant chief supervisory status. Instead, we find that the assistant chief's position is substantially similar to that of the non-supervisory station captains. When not acting

as chief, the assistant chief has the same duties as a captain, working a twenty-four hour shift, responsible for the employees working that shift. We note that there are only two employees classified as captains and, because each of the three twenty-four hour shifts is to be manned by one captain and three fire fighters, we assume that the assistant chief's primary job is essentially identical to that of a captain--that is, he is in charge of a shift. Further supporting our conclusion that the assistant chief's position is closer to that of a captain rather than that of the chief is the fact that the record indicates that the chief has the sole authority to make recommendations concerning the hiring, firing, and disciplining of employees. The evidence clearly indicates that only the chief -- - not the assistant chief --- has the authority to make such recommendations. In view of these factors we must conclude that the assistant chief's position is more similar to the captain's than the fire chief and thus cannot be considered a supervisor for the same reasons applicable to captains as set out below.

The station captains (and the assistant chief) cannot be considered supervisory personnel. They have no authority to recommend the hiring, promotion, or discharge of other fire fighters. The captain's authority to discipline fire fighters consist of submitting a written report to the chief whenever a serious discipline problem occurs. Only the chief, after an independent investigation, may discipline the fire fighter by suspension or otherwise. The captain's authority to discipline others is thus limited to informing the chief of the occurrence and as such cannot be considered sufficient to give captains supervisory status.

Admittedly the captains are in charge of their shifts and oversee the maintenance of equipment and housekeeping details, and are in charge of operations at the fire scene until the chief arrives. However, merely being in charge is not enough to constitute having the authority to direct the work force. The responsibility must be

substantial enough to make the employee a part of management, not simply a leadsman or strawboss. Further, to be considered a true supervisor, an employee must in some degree exercise independent judgment and not merely oversee routine procedures. In this case there is no evidence that the station captain's authority is substantial or that the captains exercise independent judgment while overseeing their crew. Therefore, in the absence of evidence to the contrary, we must assume that the captain's supervisory duties consist of merely insuring that specific jobs are done correctly, with their authority analogous to that of a leadsman and not that of a supervisor. Further supporting this conclusion is the fact that the captains work alongside other fire fighters, performing duties in the fire station and at the fire scene. In short, there is no evidence that the captains spend any time supervising the employees without also working alongside their subordinates and thus must be considered a leadsman or working foreman. In view of the foregoing, we must conclude that the captains do not possess the authority to be considered supervisors.

The final contested position is that of the lieutenant. The lieutenant's duties are nearly identical to those of the engineers-- a position that the City agrees should be included in the bargaining unit. The lieutenant receives the same base pay as the engineers and performs similar duties, driving the fire engine and being primarily responsible for supplying water to the fire scene. What distinguishes the lieutenant from the engineers is the fact that he has the additional duty of coordinating training activities. The record indicates that the lieutenant acts only as a coordinator of the training and most likely has no input as to the subject matter of the training. Consequently, the Board must conclude that this additional duty does not justify ascribing supervisory status to the lieutenant. Moreover, the lieutenant cannot effectively recommend the hiring, firing, or promotion of other employees. He has no authority to direct or assign

the work force except in those rare instances where the chief or a captain is not present. Further, there is no evidence that the lieutenant supervises the fire fighters in any manner. In sum, the lieutenant in no way possesses the authority to be considered a supervisor.

In view of the above considerations, the Board must conclude that the chief possess the authority to be considered a supervisor and thus is excluded from the bargaining unit. The assistant chief, captains, and lieutenant lack such authority and share a community of interest that requires that they must be included in the appropriate bargaining unit.

DECISION

Pursuant to Section 105.525 RSMo 1978, the State Board of Mediation finds the following unit to be appropriate:

"all fire fighters, engineers, lieutenants, captains, and the assistant chief, but excluding the chief."

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation among the employees in the unit found appropriate, as early as possible, but not later than forty-five (45) days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period, because they were ill or on vacation. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether (or not) they desire to be represented for the purpose of exclusive recognition by Local 2706, Professional Fire Fighters of Marshall, Missouri, affiliated with International Association of Fire Fighters.

It is hereby ordered that the Respondent shall submit to the Chairman of the State Board of Mediation, as well as to the Petitioner, within seven days from the date of receipt of this decision, an alphabetical list of the employees in the unit determined above to be appropriate during the designated payroll period.

Entered this 21st day of January, 1980.

MISSOURI STATE BOARD OF MEDIATION

(SEAL)

/s/ Conrad L. Berry
Conrad L. Berry, Chairman

/s/ Stanley Cox
Stanley Cox, Employer Member

/s/ Joseph Cointin
Joseph Cointin, Labor Member